

2010

Federal Deposit Insurance Corporation and
Richard W. Jones, Trustee v. Gary D. McDonald;
Lynnea, J. McDonald; G and L Mac, Inc.; Casey
Florence and Bradford E. Taylor as beneficiaries;
Chad C. Shattuck and Stanford A. Graham, as
trustees; Gray Excavation, Inc. : Brief of Appellant

Utah Court of Appeals

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Sherman C. Young; Dallas B. Young; Ivie & Young; Attorneys for Appellee.

Steven C. Tycksen; Chad C. Shattuck; Tycksen & Shattuck; Attorneys for Appellants.

Recommended Citation

Brief of Appellant, *Federal Deposit Insurance Corporation v. McDonald*, No. 20100356 (Utah Court of Appeals, 2010).
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IN THE UTAH COURT OF APPEALS

FEDERAL DEPOSIT INSURANCE
CORPORATION and RICHARD W.
JONES, Trustee,

Plaintiffs-Appellees,

v.

GARY D. McDONALD; LYNNEA, J.
McDONALD; G&L MAC, INC.;
CASEY FLORENCE and
BRADFORD E. TAYLOR as
beneficiaries; CHAD C. SHATTUCK
and STANFORD A. GRAHAM, as
trustees; GRAY EXCAVATION,
INC.,

Defendants-Appellants

**ADDENDUM TO BRIEF OF
APPELLANT BRAD TAYLOR**

Appellate Case No. 201000356

District Court No.: 080903426

Appeal from a Final Judgment
of the Third District Court in and for Salt Lake County, Utah

Attorney for Appellant:

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Attorney for Appellee:

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FILED
UTAH APPELLATE COURTS
NOV 16 2010

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McDONALD; G&L MAC, INC.;
CASEY FLORENCE and
BRADFORD E. TAYLOR as
beneficiaries; CHAD C. SHATTUCK
and STANFORD A. GRAHAM, as
trustees; GRAY EXCAVATION,
INC.,

Defendants-Appellants

**ADDENDUM TO BRIEF OF
APPELLANT BRAD TAYLOR**

Appellate Case No. 20100033

District Court No.: 080903426

Appeal from a Final Judgment
of the Third District Court in and for Salt Lake County, Utah

Attorney for Appellant:

Chad Shattuck (#9345)
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CERTIFICATE OF MAILING

I hereby certify that I am employed by Tycksen & Shattuck, L.L.C. and that
I mailed **2** true and correct copies of the foregoing **ADDENDUM TO BRIEF OF
APPELLANT BRAD TAYLOR**, to

Sherman C. Young
Ivie & Young
226 West 2230 North
P.O. Box 657
Provo, UT 84603

on this 16th day of November, 2010.



Tab 1

**NOTE SECURED BY DEED OF TRUST
(INDIVIDUAL)**

\$ 335,000 00

SOUTH JORDAN, UTAH

June 1, 2006

FOR VALUE RECEIVED, the undersigned jointly and severally, promise to pay to BRADFORD E TAYLOR or order, the principal sum of THREE HUNDRED THIRTY FIVE THOUSAND DOLLARS AND NO/100 payable as follows

ALL ACCRUED PRINCIPAL AND INTEREST IS DUE 12 MONTHS FROM DATE OF THIS NOTE

A FEE OF \$85,000 00 IS ASSESSED AND PAYABLE WITHIN 12 MONTHS FROM DATE OF THIS NOTE

THIS NOTE SHALL BEAR AN INTEREST RATE OF 0% (zero) PERCENT

PROCEEDS FROM THE SALE OF THE ANY LOTS SHALL BE DISBURSED FIRST TO CENTENNIAL BANK AND ANY AND ALL REMAINING FUNDS SHALL BE DISBURSED TO BRAD E TAYLOR

Principal and interest payable in lawful money of the United States of America

If default occurs in the payment of any installment of principal or interest under this Note when due, or in the performance of any agreements contained in the Deed of Trust securing this Note, the entire principal sum and accrued interest shall at once become due and payable, without notice, at the option of the holder of this Note. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default

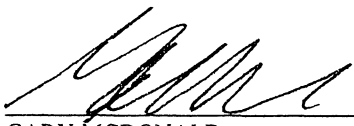
The undersigned jointly and severally agree to pay the following costs, expenses and attorney's fees paid or incurred by the holder of this Note, or adjudged by a court, (1) reasonable costs of collection, costs and expenses and attorney's fees paid or incurred in connection with the collection of this Note, whether or not suit is filed, and (2) costs of suit and such sum as the court may adjudge as attorney's fees in any action to enforce payment of this Note or any part of it

This Note is secured by a Deed of Trust to **First Southwestern Title Agency of Utah, Inc.**, as Trustee, of even date herewith, executed in favor of the named payee as beneficiary

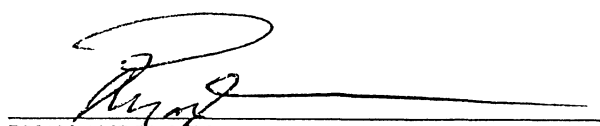
The undersigned jointly and severally waive presentment, notice of dishonor, notice of protest, demand and diligence

BORROWER:

BORROWER

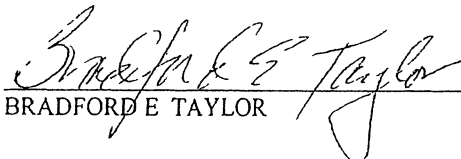


GARY MCDONALD



RYAN ANDERSEN

READ AND APPROVED BY



BRADFORD E TAYLOR

DO NOT DESTROY THIS NOTE

Do Not Destroy this Original Note. When paid, this Original Note together with the Deed of Trust securing same, must be surrendered to Trustee for Cancellation and retention before reconveyance will be made

Tab 2

RECORDING REQUESTED BY
First Southwestern Title Agency of Utah, Inc.
AND WHEN RECORDED MAIL TO:
11563 S HAGAN ROAD
SANDY, UTAH 84092

9742676
6/5/2006 9:22:00 AM \$28.00
Book - 9303 Pg - 6013-6019
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST SOUTHWESTERN TITLE
BY: eCASH, DEPUTY - EF 7 P.

ESCROW NO.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

Date: June 1, 2006

TRUSTOR:

GARY MCDONALD and RYAN ANDERSEN

TRUSTEE:

First Southwestern Title Agency of Utah, Inc.

whose mailing address is: 10701 S. River Front Parkway Suite 110, South Jordan, UT 84095

BENEFICIARY:

BRADFORD E. TAYLOR,

Witnesses: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property situated in the County of Salt Lake, State of UTAH:

See Exhibit A attached hereto and made a part hereof.

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. First Southwestern Title Agency hereby expressly disclaims any responsibility or liability for the accuracy of the content thereof.

Tax ID Number: 27-29-300-029

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

For the Purpose of Securing:

Payment of the indebtedness evidenced by a promissory note of even date hereof in the principal sum of \$335,000.00 made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; the performance of each agreement of Trustor herein contained; the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

To Protect the Security of This Deed of Trust, Trustor Agrees:

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to

Initials:



complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property Trustor further agrees:

- a. To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and
 - b. To allow Beneficiary to inspect said property at all times during construction. Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.
2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.
 3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.
 4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.
 5. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.
 6. To pay to Beneficiary monthly, in advance, an amount, as estimated by Beneficiary in its discretion, sufficient to pay all taxes and assessments affecting said property, and all premiums on insurance therefor, as and when the same shall become due.
 7. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including cost of evidence of title, employ counsel, and pay his reasonable fees.
 8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of zero% per annum until paid, and the repayment thereof shall be secured hereby.
 9. To pay to Beneficiary a "late charge" of not to exceed \$zero for each One Dollar (\$1.00) of each payment




due hereunder or due pursuant to the aforesaid promissory note of even date hereof which is more than zero days in arrears. This payment shall be made to cover the extra expense involved in handling the delinquent payments.

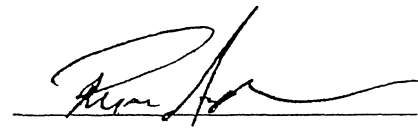
10. **IT IS MUTUALLY AGREED THAT:** Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.
11. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the note for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, and without releasing the interest of any party joining in this Deed of Trust, Trustee may (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Deed of trust or the lien or charge thereof; (d) grant any extension or modification of the terms of this loan; (e) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable trustee's fees for any of the services mentioned in this paragraph.
12. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties and profits of the property affected by this Deed of trust and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.
13. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.
14. The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
15. The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.
16. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured thereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the

Initials: LM KH _____

obligations hereof and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

17. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at zero% per annum from date of expenditure; (4) all other sums then secured hereby; and 5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the country in which the sale took place.
18. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.
19. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.
20. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by the law.
21. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledge, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
22. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or trustee shall be a party, unless brought by Trustee.
23. This Deed of trust shall be construed according to the laws of the State of UTAH.
24. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.


GARY MCDONALD


RYAN ANDERSEN

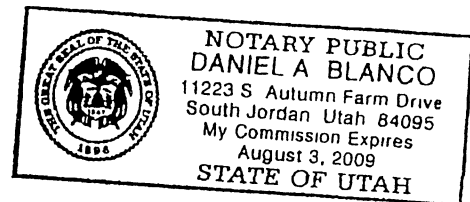
State of UTAH }ss:
County of Salt Lake

On June 1, 2006 _____, before me,
Daniel A Blanco
a Notary Public in and for said County and State, personally
appeared GARY MCDONALD and RYAN ANDERSEN
personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature 

FOR NOTARY SEAL OR STAMP



Initials:  

MTC File No. 120642
LEGAL DESCRIPTION

Exhibit "A"

PARCEL 1

Beginning at the Northwest Corner of the Southwest Quarter of Section 29 Township 3 South Range 1 West Salt Lake Base and Meridian, in Salt Lake County, Utah, and running thence South 152.5 feet; thence East 289 feet; thence North 152.5 feet; thence West 289 feet to the point of beginning.

LESS AND EXCEPTING any portion thereof lying within the bounds of 4000 West Street.

PARCEL 2:

Beginning 152.5 feet South of the Northwest corner of the Southwest Quarter of Section 29, Township 3 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, Utah, and running thence South 152.5 feet; thence East 289 feet; thence North 152.5 feet; thence West 289 feet to the point of beginning.

LESS AND EXCEPTING any portion lying within the bounds of 4000 West Street.

PARCEL 3:

The North half of the Northwest Quarter of the Southwest Quarter of Section 29, Township 3 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, Utah.

LESS AND EXCEPTING any portion lying within the bounds of 4000 West Street.

LESS AND EXCEPTING the following four (4) parcels of land:

1. Beginning at the Northwest Corner of the Southwest Quarter of Section 29 Township 3 South Range 1 West Salt Lake Base and Meridian, in Salt Lake County, Utah, and running thence South 152.5 feet; thence East 289 feet; thence North 152.5 feet; thence West 289 feet to the point of beginning.
2. Beginning 152.5 feet South of the Northwest corner of the Southwest Quarter of Section 29, Township 3 South, Range 1 West, Salt Lake Base and Meridian, in Salt Lake County, Utah, and running thence South 152.5 feet; thence East 289 feet; thence North 152.5 feet; thence West 289 feet to the point of beginning.
3. A parcel of land for the purpose of constructing thereon an expressway known as Project No. 0154, the boundaries of said parcel of land are described as follows: Beginning at a point in the Northerly boundary line of said entire tract, which point is 151.514 meters South 89°55'21" East from the West Quarter Corner of said Section 29, which point is also 22.86 meters perpendicularly distant Westerly from the centerline of said project, and running thence South 00°05'32" West 203.702 meters along a line parallel to said centerline to the Southerly boundary line of said entire tract; thence South 89°56'55" East 45.720 meters along the Southerly boundary line of said entire tract to a point 22.860 meters perpendicularly distant Easterly from the centerline of said project; thence North 00°05'32" East 203.681 meters along a line parallel to said centerline to the Northerly boundary line of said entire tract; thence North 89°55'21" West 45.720 meters along the boundary line of said entire tract to the point of beginning. (NOTE: To obtain distances in feet, divide above distances by 0.3048.)
4. Beginning at the intersection of the Easterly right of way line of an expressway known as Project No. 0154 and the Northerly boundary line of said entire tract at a point 22.860 meters perpendicularly distant Easterly from the centerline of said project, which point is 197.234 meters South 89°55'21" East from the West Quarter Corner of said Section 29, and running thence South 00°05'32" West 203.681 meters along a line parallel to said centerline to the Southerly boundary line of said entire tract; thence South 89°56'55" East 206.067 meters along said Southerly boundary line to the Southeast corner of said entire tract; thence North 00°06'01" West 203.588 meters (record 660.00 feet) along the Easterly boundary line to the Northeast corner of said entire tract; thence North 89°55'21" West 205.383 meters along said Northerly

boundary line to the point of beginning. (NOTE: To obtain distances in feet, divide above distances by 0.3048.)

Tab 3

9742028

RECORDATION REQUESTED BY:

Centennial Bank, Inc
Ogden Branch
4605 Harrison Boulevard, Suite #1
Ogden, UT 84403

WHEN RECORDED MAIL TO:

Centennial Bank, Inc
Ogden Branch
4605 Harrison Boulevard, Suite #1
Ogden, UT 84403

SEND TAX NOTICES TO:

GARY MCDONALD
1727 EAST WYLEY LANE
DRAPER, UT 84020

SL 65407

9742028

6/2/2006 3 13:00 PM \$28.00

Book - 9303 Pg - 2800-2808

Gary W. Ott

Recorder, Salt Lake County, UT
MOUNTAIN VIEW TITLE & ESCROW
BY eCASH, DEPUTY - EF 9 P.

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

CONSTRUCTION DEED OF TRUST

MAXIMUM LIEN The lien of this Deed of Trust shall not exceed at any one time \$1,704,375.00.

THIS DEED OF TRUST is dated May 24, 2006, among GARY MCDONALD, whose address is 1727 EAST WYLEY LANE, DRAPER, UT 84020 ("Trustor"); Centennial Bank, Inc., whose address is Ogden Branch, 4605 Harrison Boulevard, Suite #1, Ogden, UT 84403 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"), and Centennial Bank, Inc., whose address is 4605 Harrison Blvd., Suite #1, Ogden, UT 84403 (referred to below as "Trustee").

CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants and conveys to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances, all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in SALT LAKE County, State of Utah:

See EXHIBIT "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein

The Real Property or its address is commonly known as 12211, 12235, & 12299 SOUTH 4000 WEST, RIVERTON, UT 84065. The Real Property tax identification number is 27-29-300-029, 27-29-300-041, & 27-29-300-043.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HERewith. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents

CONSTRUCTION MORTGAGE. This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Utah

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property, (2) use, operate or manage the Property, and (3) collect the Rents from the Property. The following provisions relate to the use of the Property or to other limitations on the Property. This instrument is a Trust Deed executed in conformity with the Utah Trust Deed Act, UCA 67-1-19, et seq

Duty to Maintain. Trustor shall maintain the Property in good condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property, (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws,

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(b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

Construction Loan. If some or all of the proceeds of the loan creating the indebtedness are to be used to construct or complete construction of any improvements on the Property, the improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Trustor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the

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work, services, or materials. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender, together with such other hazard and liability insurance as Lender may reasonably require. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

LENDER'S EXPENDITURES. If Trustor fails (A) to keep the Property free of all taxes, liens, security interests, encumbrances, and other claims, (B) to provide any required insurance on the Property, or (C) to make repairs to the Property then Lender may do so. If any action or proceeding is commenced that would materially affect Lender's interests in the Property, then Lender on Trustor's behalf may, but is not required to, take any action that Lender believes to be appropriate to protect Lender's interests. All expenses incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand, (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy, or (2) the remaining term of the Note, or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. The rights provided for in this paragraph shall be in addition to any other rights or any remedies to which Lender may be entitled on account of any default. Any such action by Lender shall not be construed as curing the default so as to bar Lender from any remedy that it otherwise would have had.

WARRANTY, DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust

Title. Trustor warrants that (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustee or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Promises. All promises, agreements, and statements Trustor has made in this Deed of Trust shall survive the execution and delivery of this Deed of Trust shall be continuing in nature and shall remain in full force and effect until such time as Trustor's indebtedness is paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Deed of Trust

Proceedings. If any proceeding in condemnation is filed, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to defend the action and obtain the award. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust,

including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest, made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either: (1) pays the tax before it becomes delinquent; or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Personal Property. In addition to recording this Deed of Trust in the real property records, Lender may, at any time and without further authorization from Trustor, file executed counterparts, copies or reproductions of this Deed of Trust as a financing statement. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES, ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve: (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents; and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustor a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Real Estate and the Personal Property. Any reconveyance fee required by law shall be paid by Trustor, if permitted by applicable law.

EVENTS OF DEFAULT. At Lender's option, Trustor will be in default under this Deed of Trust if any of the following happen:

Payment Default. Trustor fails to make any payment when due under the indebtedness.

Break Other Promises. Trustor breaks any promise made to Lender or fails to perform promptly at the time and strictly in the manner provided in this Deed of Trust or in any agreement related to this Deed of Trust.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

False Statements. Any representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The death of Trustor, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Taking of the Property. Any creditor or governmental agency tries to take any of the Property or any other of Trustor's property in which Lender has a lien. This includes taking of, garnishing of or levying on Trustor's accounts with Lender. However, if Trustor disputes in good faith whether the claim on which the taking of the Property is based is valid or reasonable, and if Trustor gives Lender written notice of the claim and furnishes Lender with monies or a surety bond satisfactory to Lender to satisfy the claim, then this default provision will not apply.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not

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remedied within any grace period provided therein including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender whether existing now or later

Events Affecting Guarantor Any of the preceding events occurs with respect to any guarantor endorser surety, or accommodation party of any of the indebtedness or any guarantor endorser surety, or accommodation party dies or becomes incompetent or revokes or disputes the validity of or liability under any Guaranty of the Indebtedness In the event of a death, Lender at its option may but shall not be required to permit the guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender and in doing so cure any Event of Default

Insecurity Lender in good faith believes itself insecure

Right to Cure If any default, other than a default in payment is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months it may be cured if Trustor after receiving written notice from Lender demanding cure of such default (1) cures the default within fifteen (15) days or (2) If the cure requires more than fifteen (15) days immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical

RIGHTS AND REMEDIES ON DEFAULT If an Event of Default occurs under this Deed of Trust at any time thereafter Trustee or Lender may exercise any one or more of the following rights and remedies

Election of Remedies All of Lender's rights and remedies will be cumulative and may be exercised alone or together An election by Lender to choose any one remedy will not bar Lender from using any other remedy If Lender decides to spend money or to perform any of Trustor's obligations under this Deed of Trust after Trustor's failure to do so that decision by Lender will not affect Lender's right to declare Trustor in default and to exercise Lender's remedies

Accelerate Indebtedness Lender shall have the right at its option without notice to Trustor to declare the entire indebtedness immediately due and payable, including any prepayment penalty which Trustor would be required to pay

Foreclosure With respect to all or any part of the Real Property, the Trustee shall have the right to foreclose by notice and sale and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law

UCC Remedies With respect to all or any part of the Personal Property Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code

Collect Rents Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents including amounts past due and unpaid and apply the net proceeds over and above Lender's costs against the indebtedness In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney in fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver

Appoint Receiver Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness Trustor hereby waives any requirement that the receiver be impartial and disinterested as to all of the parties and agrees that employment by Lender shall not disqualify a person from serving as a receiver

Tenancy at Sufferance If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall at Lender's option either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender

Other Remedies Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or by law

Notice of Sale Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition Any sale of the Personal Property may be made in conjunction with any sale of the Real Property

Sale of the Property To the extent permitted by applicable law Trustor hereby waives any and all rights to have the Property marshalled In exercising its rights and remedies the Trustee or Lender shall be free to sell all or any part of the Property together or separately in one sale or by separate sales Lender shall be entitled to bid at any public sale on all or any portion of the Property

Attorneys Fees Expenses If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal Whether or not any court action is involved and to the extent not prohibited by law all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid Expenses covered by this paragraph include, without limitation however subject to any limits under applicable law Lender's reasonable attorneys' fees and Lender's legal expenses whether or not there is a lawsuit including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction) appeals and any anticipated post-judgment collection services, the cost of searching records obtaining title reports (including foreclosure reports), surveyors reports, and appraisal fees, title insurance and fees for the Trustee, to the extent permitted by applicable law Trustor also will pay any court costs, in addition to all other sums provided by law

Rights of Trustee Trustee shall have all of the rights and duties of Lender as set forth in this section

POWERS AND OBLIGATIONS OF TRUSTEE The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust

Powers of Trustee In addition to all powers of Trustee arising as a matter of law Trustee shall have the power to take the following

actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public, (b) join in granting any easement or creating any restriction on the Real Property, and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust

Obligations to Notify Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien or of any action or proceeding in which Trustor Lender or Trustee shall be a party unless the action or proceeding is brought by Trustee

Trustee Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender will have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee Lender at Lender's option may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of SALT LAKE County, State of Utah. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

NOTICES Unless otherwise provided by applicable law, any notice required to be given under this Deed of Trust or required by law, including without limitation any notice of default and any notice of sale shall be given in writing and shall be effective when actually delivered in accordance with the law or with this Deed of Trust when actually received by telefacsimile (unless otherwise required by law) when deposited with a nationally recognized overnight courier or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addressee shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Notwithstanding any other provision of this Deed of Trust, all notices given under Utah Code Ann. Section 57-1-26 shall be given as required therein. Any person may change his or her address for notices under this Deed of Trust by giving formal written notice to the other person or persons, specifying that the purpose of the notice is to change the person's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided by applicable law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors. It will be Trustor's responsibility to tell the others of the notice from Lender.

MISCELLANEOUS PROVISIONS The following miscellaneous provisions are a part of this Deed of Trust:

Amendments What is written in this Deed of Trust and in the Related Documents is Trustor's entire agreement with Lender concerning the matters covered by this Deed of Trust. To be effective, any change or amendment to this Deed of Trust must be in writing and must be signed by whoever will be bound or obligated by the change or amendment.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender

Governing Law This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Utah without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of Utah.

Choice of Venue If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of Weber County State of Utah

No Waiver by Lender. Trustor understands Lender will not give up any of Lender's rights under this Deed of Trust unless Lender does so in writing. The fact that Lender delays or omits to exercise any right will not mean that Lender has given up that right. If Lender does agree in writing to give up one of Lender's rights, that does not mean Trustor will not have to comply with the other provisions of this Deed of Trust. Trustor also understands that if Lender does consent to a request, that does not mean that Trustor will not have to get Lender's consent again if the situation happens again. Trustor further understands that just because Lender consents to one or more of Trustor's requests, that does not mean Lender will be required to consent to any of Trustor's future requests. Trustor waives presentment demand for payment, protest and notice of dishonor. Trustor waives all rights of exemption from execution or similar law in the Property, and Trustor agrees that the rights of Lender in the Property under this Deed of Trust are prior to Trustor's rights while this Deed of Trust remains in effect.

Severability If a court finds that any provision of this Deed of Trust is not valid or should not be enforced, that fact by itself will not mean that the rest of this Deed of Trust will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Deed of Trust even if a provision of this Deed of Trust may be found to be invalid or unenforceable.

Successors and Assigns Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest this Deed of Trust shall be binding upon and inure to the benefit of the parties their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waiver of Homestead Exemption. Trustor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of Utah as to all indebtedness secured by this Deed of Trust

DEFINITIONS The following words shall have the following meanings when used in this Deed of Trust:

Beneficiary The word "Beneficiary" means Centennial Bank Inc , and its successors and assigns

Borrower. The word "Borrower" means GARY McDONALD and includes all co-signers and co-makers signing the Note and all their successors and assigns.

DEED OF TRUST
(Continued)

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Guaranty. The word "Guaranty" means the guaranty from guarantor, endorser, surety, or accommodation party to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Centennial Bank, Inc., its successors and assigns. The words "successors or assigns" mean any person or company that acquires any interest in the Note.

Note. The word "Note" means the promissory note dated May 24, 2008, in the original principal amount of \$1,704,375.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

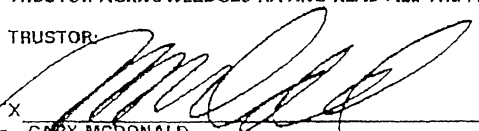
Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

Trustee. The word "Trustee" means Centennial Bank, Inc., whose address is 4605 Harrison Blvd., Suite #1, Ogden, UT 84403 and any substitute or successor trustees.

Trustor. The word "Trustor" means GARY McDONALD.

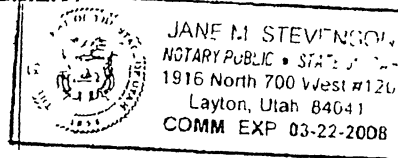
TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS.

TRUSTOR:

X 
GARY McDONALD

DEED OF TRUST
(Continued)

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Utah
COUNTY OF Davis)
) SS
)

On this day before me, the undersigned Notary Public, personally appeared GARY McDONALD, to me known to be the individual described in and who executed the Deed of Trust, and acknowledged that he or she signed the Deed of Trust as his or her free and voluntary act and deed, for the uses and purposes therein mentioned

Given under my hand and official seal this 24 day of May, 2006.

By Jane M Stevenson Residing at _____

Notary Public in and for the State of Utah My commission expires 3/08

REQUEST FOR FULL RECONVEYANCE

(To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

Continued

EXHIBIT "A"

PARCEL 1.

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE MERIDIAN, THENCE SOUTH 152 1/2 FEET, THENCE EAST 289 FEET, THENCE NORTH 152 1/2 FEET; THENCE WEST 289 FEET TO THE POINT OF THE BEGINNING.

SUBJECT TO EASEMENTS, COVENANTS, RESTRICTIONS, RIGHTS OF WAY AND RESERVATIONS APPEARING OF RECORD AND TAXES FOR THE 1978 AND THEREAFTER.

SUBJECT TO A RIGHT OF WAY EASEMENT OVER THE WEST PORTION, OF THE ABOVE DESCRIBED LAND, LYING WITHIN THE BOUNDS OF 4000 WEST STREET.

NOTE: THE UNITED EFFORT PLAN TRUST IS A RELIGIOUS AND CHARITABLE TRUST UNDER THE SUPERVISION OF THE FUNDAMENTALIST CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS.

PROPERTY ADDRESS: 12211 SOUTH 4000 WEST, RIVERTON, UTAH 84065

PARCEL 2:

BEGINNING SOUTH 89 DEG 57 MIN 17 SEC EAST 283.00 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THENCE CONTINUING SOUTH 89 DEG 57 MIN 17 SEC EAST 214 09 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE TO THE WEST RIGHT-OF-WAY OF BANGERTEER HIGHWAY; THENCE ALONG SAID WEST RIGHT-OF-WAY OF BANGERTEER HIGHWAY SOUTH 00 DEG 03 MIN 56 SEC WEST 669.25 FEET; THENCE NORTH 89 DEG 56 MIN 54 SEC WEST 494.47 FEET TO THE SECTION LINE; THENCE ALONG SAID SECTION LINE NORTH 00 DEG 09 MIN 32 SEC WEST 364.20 FEET; THENCE NORTH 89 DEG 57 MIN 17 SEC EAST 190.00 FEET; THENCE NORTH 00 DEG 09 MIN 32 SEC WEST 152.50 FEET; THENCE SOUTH 89 DEG 57 MIN 17 SEC EAST 93.00 FEET; THENCE NORTH 00 DEG 09 MIN 32 SEC WEST 152 50 FEET TO THE POINT OF BEGINNING.

PROPERTY ADDRESS: 12235 SOUTH 4000 WEST, RIVERTON, UTAH 84065

PARCEL 3:

BEGINNING SOUTH 00 DEG 09 MIN 32 SEC EAST 481.00 FEET ALONG THE SECTION LINE AND SOUTH 89 DEG 57 MIN 17 SEC EAST 130.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEG 57 MIN 17 SEC EAST 90.00 FEET; THENCE SOUTH 00 DEG 09 MIN 32 SEC EAST 188.22 FEET; THENCE NORTH 89 DEG 56 MIN 54 SEC WEST 90.00 FEET; THENCE NORTH 00 DEG 09 MIN 32 SEC WEST 188 21 FEET TO THE POINT OF BEGINNING.

PROPERTY ADDRESS: 12299 SOUTH 4000 WEST, RIVERTON, UTAH 84065

Tab 4

**NOTE SECURED BY DEED OF TRUST
(INDIVIDUAL)**

\$ 435,000.00

September 5, 2006

FOR VALUE RECEIVED, the undersigned jointly and severally, promise to pay to BRADFORD E. TAYLOR or order, the principal sum of FOUR HUNDRED THIRTY FIVE THOUSAND DOLLARS AND NO/100 payable as follows:

ALL ACCRUED INTEREST AND PRINCIPAL SHALL BE DUE TWELVE (12) MONTHS FROM JUNE 1, 2006.

A FEE OF ONE HUNDRED TEN THOUSAND DOLLARS AND NO/100 (\$110,000.00) IS DUE AND PAYABLE TWELVE (12) MONTHS FROM DATE OF THIS NOTE.

THIS NOTE SHALL BEAR AN INTEREST RATE OF ZERO (0) PERCENT PER ANNUM.

PROCEEDS FROM THE SALE OF ANY OF THE LOTS IN MCKENZIE PARK ESTATES SUBDIVISION SHALL BE DISBURSED FIRST TO CENTENNIAL BANK, THEN ANY AND ALL REMAINING FUNDS SHALL BE PAYABLE TO BRADFORD E. TAYLOR.

Principal and interest payable in lawful money of the United States of America.

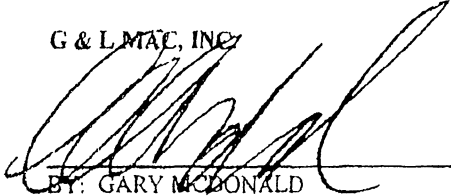
If default occurs in the payment of any installment of principal or interest under this Note when due, or in the performance of any agreements contained in the Deed of Trust securing this Note, the entire principal sum and accrued interest shall at once become due and payable, without notice, at the option of the holder of this Note. Failure to exercise such option shall not constitute a waiver of the right to exercise it in the event of any subsequent default.

The undersigned jointly and severally agree to pay the following costs, expenses and attorney's fees paid or incurred by the holder of this Note, or adjudged by a court; (1) reasonable costs of collection, costs and expenses and attorney's fees paid or incurred in connection with the collection of this Note, whether or not suit is filed, and (2) costs of suit and such sum as the court may adjudge as attorney's fees in any action to enforce payment of this Note or any part of it.

This Note is secured by a Deed of Trust to **First Southwestern Title Agency of Utah, Inc.**, as Trustee, of even date herewith, executed in favor of the named payee as beneficiary.

The undersigned jointly and severally waive presentment, notice of dishonor, notice of protest, demand and diligence.

G & L MAC, INC.


BY: GARY McDONALD
ITS: PRESIDENT


RYAN ANDERSEN

READ AND APPROVED BY:


BRADFORD E. TAYLOR

DO NOT DESTROY THIS NOTE

Do Not Destroy this Original Note: When paid, this Original Note together with the Deed of Trust securing

EXHIBIT "A "

A.P.N.: 27-29-300-041-0000

BEGINNING SOUTH 89°57'17" EAST 283.00 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE CONTINUING SOUTH 89°57'17" EAST 214.09 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE TO THE WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY; THENCE ALONG SAID WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY SOUTH 00°03'56" WEST 669.25 FEET; THENCE NORTH 89°56'54" WEST 494.47 FEET TO THE SECTION LINE; THENCE ALONG SAID SECTION LINE NORTH 00°09'32" WEST 364.20 FEET; THENCE NORTH 89°57'17" EAST 190.00 FEET; THENCE NORTH 00°09'32" WEST 152.50 FEET; THENCE SOUTH 89°57'17" EAST 93.00 FEET; THENCE NORTH 00°09'32" WEST 152.50 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING SOUTH 89°57'17" EAST 343.00 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE CONTINUING ALONG SAID CENTER OF SECTION LINE SOUTH 89°57'17" EAST 154.09 FEET TO THE WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY; THENCE ALONG SAID WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY SOUTH 00°03'56" WEST 92.00 FEET; THENCE NORTH 89°57'17" WEST 153.73 FEET; THENCE NORTH 00°09'32" WEST 92.00 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING SOUTH 00°09'32" EAST 481.00 FEET ALONG THE SECTION LINE AND SOUTH 89°57'17" EAST 130.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°57'17" EAST 90.00 FEET; THENCE SOUTH 00°09'32" EAST 188.22 FEET; THENCE NORTH 89°56'54" WEST 90.00 FEET, THENCE NORTH 00°02'32" WEST 188.21 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 152 1/2 FEET; THENCE EAST 289 FEET; THENCE NORTH 152 1/2 FEET; THENCE WEST 289 FEET TO THE POINT OF BEGINNING.

Tab 5

36108

RECORDING REQUESTED BY
First Southwestern Title Agency of Utah, Inc.
AND WHEN RECORDED MAIL TO:

11563 S. HARMON RD.
SANDY, UT 84092

ESCROW NO.: 00044522 - 003 - DB

9836108
9/6/2006 10:20:00 AM \$23.00
Book - 9347 Pg - 429-434
Gary W. Ott
Recorder, Salt Lake County, UT
FIRST SOUTHWESTERN TITLE
BY: eCASH, DEPUTY - EF 6 P.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF TRUST AND ASSIGNMENT OF RENTS

A.P.N.:

Date: September 5, 2006

TRUSTOR:

G & L MAC, INC.

TRUSTEE:

First Southwestern Title Agency of Utah, Inc.

whose mailing address is: 10701 S. River Front Parkway Suite 110, South Jordan, UT 84095

BENEFICIARY:

BRADFORD E. TAYLOR

Witnesses: That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property situated in the County of Salt Lake, State of UTAH:

See Exhibit A attached hereto and made a part hereof.

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. First Southwestern Title Agency hereby expressly disclaims any responsibility or liability for the accuracy of the content thereof.

Tax ID Number:

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with said property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

For the Purpose of Securing:

Payment of the indebtedness evidenced by a promissory note of even date hereof in the principal sum of \$435,000.00 made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; the performance of each agreement of Trustor herein contained; the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

To Protect the Security of This Deed of Trust, Trustor Agrees:

Initials: 

1. To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part thereof is being obtained for the purpose of financing construction of improvements on said property Trustor further agrees:
 - a. To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and
 - b. To allow Beneficiary to inspect said property at all times during construction. Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.
2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary, instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged. In the event that the Trustor shall fail to provide satisfactory hazard insurance, the Beneficiary may procure, on the Trustor's behalf, insurance in favor of the Beneficiary alone. If insurance cannot be secured by the Trustor to provide the required coverage, this will constitute an act of default under the terms of this Deed of Trust.
3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.
4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or trustee elect to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.
5. To pay at least 10 days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest, on said property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.
6. To pay to Beneficiary monthly, in advance, an amount, as estimated by Beneficiary in its discretion, sufficient to pay all taxes and assessments affecting said property, and all premiums on insurance therefor, as and when the same shall become due.
7. Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in exercising such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefore, including cost of evidence of title, employ counsel, and pay his reasonable fees.
8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of zero% per annum until paid, and the repayment thereof shall be secured hereby.

- 9 **IT IS MUTUALLY AGREED THAT.** Should said property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefore, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.
- 10 At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Deed of Trust and the note for endorsement (in case of full reconveyance, for cancellation and retention) without affecting the liability of any person for the payment of the indebtedness secured hereby, and without releasing the interest of any party joining in this Deed of Trust, Trustee may (a) consent to the making of any map or plat of said property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this Deed of trust or the lien or charge thereof, (d) grant any extension or modification of the terms of this loan, (e) reconvey, without warranty, all or any part of said property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable trustee's fees for any of the services mentioned in this paragraph.
- 11 As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties and profits of the property affected by this Deed of trust and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Deed of Trust to any such tenancy, lease or option.
- 12 Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon any indebtedness secured hereby, and in such order as Beneficiary may determine.
- 13 The entering upon and taking possession of said property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of said property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- 14 The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.
- 15 Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured thereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause said property to be sold to satisfy the obligations hereof and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.



16. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale from time to time until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than one day beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying said property so sold, but without any covenant of warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at zero% per annum from date of expenditure; (4) all other sums then secured hereby; and 5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the country in which the sale took place.
17. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.
18. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.
19. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which said property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by the law.
20. This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledge, of the note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
21. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or trustee shall be a party, unless brought by Trustee.
22. This Deed of trust shall be construed according to the laws of the State of UTAH.
23. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

Initials:  _____

G & L MAC, INC.

BY: GARY McDONALD
ITS: PRESIDENT

State of UTAH
County of Salt Lake

} ss:

On September 5, 2006, before me,
Daniel A Blanco

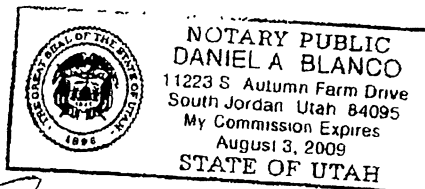
a Notary Public in and for said County and State, personally
appeared GARY MCDONALD

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

FOR NOTARY SEAL OR STAMP



Initials:

EXHIBIT "A "

A.P.N.: 27-29-300-041-0000

BEGINNING SOUTH 89°57'17" EAST 283.00 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE CONTINUING SOUTH 89°57'17" EAST 214.09 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE TO THE WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY; THENCE ALONG SAID WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY SOUTH 00°03'56" WEST 669.25 FEET; THENCE NORTH 89°56'54" WEST 494.47 FEET TO THE SECTION LINE; THENCE ALONG SAID SECTION LINE NORTH 00°09'32" WEST 364.20 FEET; THENCE NORTH 89°57'17" EAST 190.00 FEET; THENCE NORTH 00°09'32" WEST 152.50 FEET; THENCE SOUTH 89°57'17" EAST 93.00 FEET; THENCE NORTH 00°09'32" WEST 152.50 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING SOUTH 89°57'17" EAST 343.00 FEET ALONG THE EAST-WEST CENTER OF SECTION LINE FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, THENCE CONTINUING ALONG SAID CENTER OF SECTION LINE SOUTH 89°57'17" EAST 154.09 FEET TO THE WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY; THENCE ALONG SAID WEST RIGHT-OF-WAY OF BANGERTE HIGHWAY SOUTH 00°03'56" WEST 92.00 FEET; THENCE NORTH 89°57'17" WEST 153.73 FEET; THENCE NORTH 00°09'32" WEST 92.00 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING SOUTH 00°09'32" EAST 481.00 FEET ALONG THE SECTION LINE AND SOUTH 89°57'17" EAST 130.00 FEET FROM THE WEST QUARTER CORNER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°57'17" EAST 90.00 FEET; THENCE SOUTH 00°09'32" EAST 188.22 FEET; THENCE NORTH 89°56'54" WEST 90.00 FEET; THENCE NORTH 00°02'32" WEST 188.21 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM ANY PORTION LYING WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 152 1/2 FEET; THENCE EAST 289 FEET; THENCE NORTH 152 1/2 FEET; THENCE WEST 289 FEET TO THE POINT OF BEGINNING.

Tab 6

9949883

SL65407

WHEN RECORDED, MAIL TO:

Grantee

11576 South State Street #303

Draper, Utah 84020

9949883

12/22/2006 12:26:00 PM \$14.00

Book - 9398 Pg - 9216-9217

Gary W. Ott

Recorder, Salt Lake County, UT

MOUNTAIN VIEW TITLE & ESCROW

BY: eCASH, DEPUTY - EF 2 P.

Space Above for Recorder's Use

Special Warranty Deed

G&L MAC, INC., Grantor, of Draper City, County of Salt Lake, State of Utah, hereby CONVEY and WARRANT against all claiming by, through or under grantor to

GARY MCDONALD

, Grantee, of Draper, County of Salt Lake, State of Utah, for the sum of TEN AND NO/100's-----

--DOLLARS, and other good and valuable considerations the following described tract of land in
of Utah, to-wit:

County, State

SEE ATTACHED EXHIBIT "A"

Subject to current general taxes, easements, restrictions, rights of way and reservations appearing of record.

WITNESS the hand of said grantor, this 21st day of December, 2006

Signed in the presence of

G&L MAC, INC.

BY: Gary McDonald

ITS: President

State of [UTAH]
County of Salt Lake

}ss:

On December 21, 2006, before me,
Daniel A. Blanco

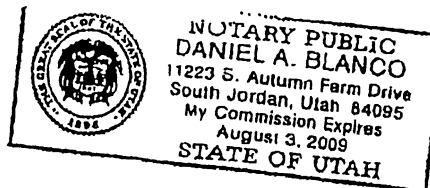
a Notary Public in and for said County and State, personally
appeared GARY MCDONALD

personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me
that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the
instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

FOR NOTARY SEAL OR STAMP



Tab 7

Utah Code Ann. § 57-1-10 (2006). After-acquired title passes.

(1) If any person conveys any real estate by conveyance purporting to convey the same in fee simple absolute, and at the time of the conveyance the person does not have the legal estate in the real estate, but afterwards acquires the same:

(a) the legal estate subsequently acquired shall immediately pass to the grantee, the grantee's heirs, successors, or assigns; and

(b) the conveyance shall be as valid as if the legal estate had been in the grantor at the time of the conveyance.

(2) (a) Subsection (1) applies to a conveyance by:

(i) warranty deed;

(ii) special warranty deed; or

(iii) trust deed.

(b) Subsection (1) does not apply to a conveyance by quitclaim deed.

Tab 8

Utah Code Ann. § 57-3-103 (2006). Effect of failure to record

Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:

- (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and
- (2) the subsequent purchaser's document is first duly recorded.

Tab 9

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

CENTENNIAL BANK, INC., and : MEMORANDUM DECISION
RICHARD W. JONES, Trustee, :

Plaintiffs, : CASE NO. 080903426

vs. :

GARY D. McDONALD, LYNNEA J. :
McDONALD, G&L MAC, INC.; CASEY :
FLORENCE, BRADFORD E. TAYLOR, as :
beneficiaries; CHAD C. SHATTUCK :
and STANFORD A. GRAHAM, as :
Trustees; GRAY EXCAVATION, INC., :

Defendants. :

BRADFORD E. TAYLOR, :

Third Party Plaintiff, :

vs. : :

RYAN ANDERSEN and JOHN DOES 1-10, :

Third Party Defendants. :

GRAY EXCAVATION, INC., a Utah :
corporation, JARED R. GRAY and :
HEIDI H. GRAY, BERNARD W. DUTSON, :
AZORA DUTSON, LYMAN DUTSON, MICHAEL :
WEIS, LUCIA WEIS, LANE MYERS, LANE :
MYERS CONSTRUCTION, L.C., and :
JOHN DOES 1-25, :

Plaintiffs, :

vs. :

CENTENNIAL BANK, INC., GARY :
McDONALD, G&L MAC, INC., RYAN :
ANDERSEN, CASEY FLORENCE, :
BRADFORD E. TAYLOR, MOUNTAIN VIEW :
TITLE AND ESCROW, and JOHN DOES :
1-100, as well as another person or :
entity claiming any right, title :
or interest in the real property :
which is the subject of this :
action, :

Defendants. :

CENTENNIAL BANK, INC., :

Counterclaimant and :
Cross-Claimant, :

vs. :

GRAY EXCAVATION, INC., a Utah :
corporation, JARED R. GRAY and :
HEIDI H. GRAY, BERNARD W. DUTSON, :
AZORA DUTSON, LYMAN DUTSON, :
MICHAEL WEIS, LUCIA WEIS, LANE :
MYERS, LANE MYERS CONSTRUCTION, :
L.C., GARY McDONALD, G&L MAC, INC., :
RYAN ANDERSEN, CASEY FLORENCE, :
BRADFORD E. TAYLOR, MOUNTAIN VIEW :
TITLE AND ESCROW, and JOHN DOES :
1-10, as well as another person or :
entity claiming any right, title :
or interest in the real property :
which is the subject of this :
action, :

Counterclaim and :
Cross-Claim Defendants. :

This matter came before the Court for hearing on August 19, 2009,

in connection with the Plaintiffs' Motion for Partial Summary Judgment as to the Validity and Enforceability of the Lien of Plaintiffs' Deed of Trust and Defendant Brad Taylor's Motion for Partial Summary Judgment. At the conclusion of the hearing, the Court took the matter under advisement to further consider the relevant legal authority, the parties' written submissions and counsel's oral argument. Being now fully informed, the Court rules as stated herein.

LEGAL ANALYSIS

At the outset, the Court notes that the material facts in this case are not in dispute and that the pivotal issues presented by the parties' cross-Motions seeking Partial Summary Judgment are legal in nature. These issues specifically involve the legal validity and order of priority of various conveyance instruments pertaining to real estate located in Riverton, Utah (the "Property").

The undisputed facts indicate that on June 1, 2006, Defendants Gary McDonald and Ryan Andersen executed a Deed of Trust in favor of Defendant Taylor. This Deed of Trust was recorded on June 5, 2006. This Deed of Trust purported to convey the Property from Defendants McDonald and Andersen, individually, in favor of Defendant Taylor. In reality, the Property was not owned by Defendants McDonald and Anderson, but owned by Defendant G&L Mac, Inc. ("G&L").

On June 2, 2006, Defendant McDonald, again in his individual capacity, executed a Deed of Trust in favor of Plaintiff Centennial

Bank, Inc. ("Centennial"). This Deed of Trust was also recorded on June 2, 2006.

The Affidavits submitted by the Plaintiffs are particularly informative regarding the events leading up to Defendant McDonald executing the June 2, 2006, Deed of Trust in favor of Centennial. In her Affidavit, Suzanne Gnehm, Assistant Vice President and Senior Loan Underwriter for Centennial Bank, attests as follows: "As part of the purchase I understood that at closing, a deed would be executed to convey title for the property to Gary McDonald, individually, from G&L Mac, Inc." (Gnehm Affidavit at para. 25). Cheryl Driscoll, the Loan Closer for Centennial attests in her Affidavit that it was her job to prepare the closing documents, but that she "did not prepare a deed conveying title to the Property to Mr. McDonald individually because it was the responsibility of the title company to make sure the appropriate documents are executed at closing so that title to the Property was properly vested and that [Centennial's] Deed of Trust was a first lien upon the Property. . . . I checked and confirmed that Gary McDonald had executed the Deed of Trust, individually." (Driscoll Affidavit at paragraphs 3, 20 and 29). Jane Stevenson, an escrow officer with Mountain View Title and Escrow, indicates in her Affidavit that the intention was for Defendant McDonald to "own the Property individually

~~"(Stevenson Affidavit at para. 8). In apparent contradiction to~~
Ms. Driscoll's statements, Ms. Stevenson attests that "Centennial Bank

prepares its own loan documentation including deeds of trust. The Bank did not supply a deed necessary to vest title to the property in McDonald. When the Loan package came to the title company from the Bank, the Deed of Trust had already been prepared by the Bank for Gary McDonald to execute in his individual capacity." (Stevenson Affidavit at paragraphs 17 - 19). Ms. Stevenson goes on to attest that at the time of closing, she did not prepare and Defendant McDonald did not execute a deed conveying the property from G&L to himself individually. (Stevenson Affidavit at para. 32). She indicates that this was "an oversight in the closing" and "not the mistake of Mr. McDonald or the Bank, in not having Gary McDonald execute a deed from G&L Mac, Inc. to Gary McDonald individually, and in not recording that deed so as to vest title in Gary McDonald, individually, before the Bank's Deed of Trust was recorded."

It is apparent from the foregoing that both the June 1 and June 2, 2006, Deeds of Trust were ineffective in that neither Defendant McDonald nor Defendant Anderson owned the Property individually when they attempted to convey them by Deed of Trust to Centennial and to Defendant Taylor. Further, it appears that Defendant Taylor was the first to discover this fact and on September 5, 2006, he obtained a Deed of Trust from the property owner Defendant G&L in his favor. This Deed of Trust was recorded on September 6, 2006

The Plaintiffs acknowledge that their Deed of Trust was recorded when record title to the Property was held in the name of G&L, rather than in the name of Defendant McDonald, individually. The Plaintiffs maintain that the failure to obtain a deed from G&L to Defendant McDonald, individually, was a "scrivener's error" which was subsequently cured by the recording of a Special Warranty Deed from G&L to Defendant McDonald on December 22, 2006.

The Court is not persuaded by this argument. Rather, the undisputed facts discussed above clearly demonstrate a failure to execute the necessary documents to effectuate a transfer from G&L to Defendant McDonald. Whether the fault for this failure lies with Centennial or the escrow officer who conducted the closing is not an issue presently before this Court. Irrespective of who caused the oversight, the fact remains that the failure to execute a document does not amount to a "scrivener's error." Indeed, this is not a case where the instruments themselves contain mistakes which were contrary to the parties' intent. All of the Affidavits referenced above agree that the documents executed were the documents intended with the only error being that one additional document was not provided and therefore not executed. The Court is satisfied that the doctrine of reformation is simply inapplicable under these circumstances.

~~Likewise, the Court notes that the parties have each relied on the doctrine of equitable subrogation as a basis for arguing the priority of~~

their respective liens. Again, the Court is not persuaded that this doctrine has any application in this case, particularly since equitable principles cannot be invoked to undo or otherwise alter the results and remedies achieved by the law established under Utah's After-Acquired Title statute, Utah Code Ann., § 57-1-10 (2006), and Utah's Race-Notice statute, Utah Code Ann., § 57-3-102.

That brings the Court to the core issue in this case the interplay between the After-Acquired Title and Race-Notice statutes. As the Court understands Plaintiff Centennial's argument, even though its June 2, 2006 Deed of Trust was invalid when recorded, it is relying on Utah's After-Acquired Title statute to create a valid lien with a priority date of June 2, 2006, the recording date of the initial Deed of Trust executed by Defendant McDonald in favor of Centennial. Centennial argues that its lien is senior to Defendant Taylor's lien because its lien was recorded on June 2, 2006 and pre-dates the recording both of Defendant Taylor's initial Deed of Trust from Defendant McDonald, which was recorded on June 5, 2006, as well as the September 6, 2006 Deed of Trust from Defendant G&L to Defendant Taylor.

Taylor responds that when G&L executed the September 2006 Deed of Trust in his favor, it had nothing more to convey to Centennial when it subsequently executed the December Special Warranty Deed. During oral argument, ~~Taylor's counsel further argued that the After-Acquired Title statute cannot be read in a way that trumps the Race-Notice statute.~~

Having considered the parties' respective legal positions, the Court determines that Defendant Taylor is incorrect in arguing that there was no interest left to convey to Centennial by Defendant G&L by way of the December 2006 Special Warranty Deed because the September 2006 Deed of Trust divested Defendant G&L of its interest in the Property. Centennial has the better argued position on this point because while a Deed of Trust may be a conveyance, it is not conveyance in fee simple absolute. The Court agrees with Centennial that because a Deed of Trust is less than a conveyance of title by warranty deed, Defendant G&L did not entirely divest itself of its full interest or title in the Property. Therefore, the After-Acquired Title statute does potentially apply in this case.

However, where the Court's views diverge from Centennial's is with respect to Centennial's apparent position that Defendant McDonald having acquired title to the Property in December 2006 by way of a Special Warranty Deed, the After-Acquired Title statute relates back to establish a valid lien with a priority date of the original recording of the invalid conveyance, even though there was an intervening and valid conveyance with a recording date of September 6, 2006. The Court's own research has revealed a very recent case from the Court of Appeals in Colorado which belies Centennial's positions in this regard.

Specifically, in Premier Bank v. Board of County Commissioners of the County of Bent, 2009 Colo. App. LEXIS 1040 (June 11, 2009), the

Colorado court held that Colorado's after-acquired title statute does not affect priority under race-notice. While Colorado's statute differs in certain respects from Utah's After-Acquired Title Statute, both statutes are similar in that they contain "no language pertaining to or overriding the establishment of lien priorities under race-notice." Id. at *15. Notably, in the Colorado case, Premier Bank took a position similar to Centennial with respect to the priority argument. In evaluating this position, the Colorado court noted:

Indeed, the effect of the Bank's interpretation would be that a purported grantor and grantee, neither of whom at the time of their transaction possessed any interest in a subsequently acquired fee simple estate, could create a lien priority date on that interest senior to that of an otherwise recorded and perfected lien established in favor of a third party by the then actual owner of the fee simple estate prior to the grantor's subsequent acquisition of the interest. That result would not only turn the race-notice scheme upside-down, but also would be in obvious conflict with other fundamental provisions of real estate law . . .

Id. at *15-16 (internal citations omitted). One of the authorities relied on by the court was American Law of Property § 15.22 (Title by Estoppel), at 851, (1952) (after-acquired title passes to grantee in the condition grantor acquires it, i.e. "subject to a mortgage to a third-party.").

Based on the reasoning in Premier Bank, the Court could conclude that when Defendant G&L conveyed title to the property to Defendant McDonald in December 2006, that conveyance was subject to Defendant Taylor's lien. This lien was recorded and perfected and had a lien

priority date of September 2006 and was senior in time to that of Centennial's subsequently acquired interest in December 2006. This result appears to be consistent with fundamental principles of race-notice and real estate law.

However, because the Court is discussing legal authority which the parties have not had an opportunity to review or address, the Court is willing to give the parties that opportunity in the form of supplemental briefing on the issue if the after-acquired title statute passes the property to Plaintiff Centennial (grantee) in the condition Defendant McDonald (grantor) acquires it, i.e. "subject to a mortgage to a third-party", which in this case is Defendant Taylor.

The Court requests that counsel for both Centennial and Taylor simultaneously, within five days of this Memorandum Decision, submit supplemental Memoranda limited to addressing the applicability of the analysis in Premier Bank that the after-acquired title statute does not affect lien priority i.e. prevail over the race notice statute. Counsel should notify the Court's clerk when both Memoranda are filed so that the Court can review the same and issue a final Memorandum Decision.

This Memorandum Decision will stand as the Order of the Court.

Dated this 6th day of October, 2009.

151

ROBERT P. FAUST
DISTRICT COURT JUDGE

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 6th day of October, 2009:

Sherman C. Young
Attorney for Plaintiffs
226 West 2230 North
P.O. Box 657
Provo, Utah 84603

Stanford A. Graham
Attorney for Casey Florence
2120 N. Valley View Drive
Layton, Utah 84040

Steven C. Tycksen
Chad C. Shattuck
W. Sean Mawhinney
Attorneys for Bradford Taylor and
Chad C. Shattuck, Trustee
12401 South 450 East, Suite E-1
Draper, Utah 84020

John T. Walsh
Attorney for Gray Excavation
3191 S. Valley Street, Suite 240
Salt Lake City, Utah 84109

Ryan Andersen
561 W. Wild Willow Drive
Kamas, Utah 84036

_____

Chad Shattuck (#9345)
TYCKSEN & SHATTUCK, LLC
12401 S. 450 E. Unit E1
Draper, UT 84020
Tel: 801-748-4081
Fax: 801-748-4087

IN THE UTAH COURT OF APPEALS

FEDERAL DEPOSIT INSURANCE
CORPORATION and RICHARD W.
JONES, Trustee,

Plaintiffs-Appellees,

v.

GARY D. McDONALD; LYNNEA, J.
McDONALD; G&L MAC, INC.;
CASEY FLORENCE and
BRADFORD E. TAYLOR as
beneficiaries; CHAD C. SHATTUCK
and STANFORD A. GRAHAM, as
trustees; GRAY EXCAVATION,
INC.,

Defendants-Appellants

**ADDENDUM TO BRIEF OF
APPELLANT BRAD TAYLOR**

Appellate Case No. 20100033

District Court No.: 080903426

Appeal from a Final Judgment
of the Third District Court in and for Salt Lake County, Utah

Attorney for Appellant:

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Attorney for Appellee:

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Provo, UT 84603
Tel: 801-375-3000
Fax: 801-375-3067

Tab 10

DEC 07 2009

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

CENTENNIAL BANK, INC., and : MEMORANDUM DECISION
RICHARD W. JONES, Trustee, :

Plaintiffs, : CASE NO. 080903426

vs. :

GARY D. McDONALD, LYNNEA J. :
McDONALD, G&L MAC, INC.; CASEY :
FLORENCE, BRADFORD E. TAYLOR, as :
beneficiaries; CHAD C. SHATTUCK :
and STANFORD A. GRAHAM, as :
Trustees; GRAY EXCAVATION, INC., :

Defendants. :

BRADFORD E. TAYLOR, :

Third Party Plaintiff, :

vs. :

RYAN ANDERSEN and JOHN DOES 1-10, :

Third Party Defendants. :

GRAY EXCAVATION, INC., a Utah :
corporation, JARED R. GRAY and :
HEIDI H. GRAY, BERNARD W. DUTSON, :
AZORA DUTSON, LYMAN DUTSON, MICHAEL :
WEIS, LUCIA WEIS, LANE MYERS, LANE :
MYERS CONSTRUCTION, L.C., and :
JOHN DOES 1-25, :

Plaintiffs, :

vs. :

CENTENNIAL BANK, INC., GARY :
 McDONALD, G&L MAC, INC., RYAN :
 ANDERSEN, CASEY FLORENCE, :
 BRADFORD E. TAYLOR, MOUNTAIN VIEW :
 TITLE AND ESCROW, and JOHN DOES :
 1-100, as well as another person or :
 entity claiming any right, title :
 or interest in the real property :
 which is the subject of this :
 action, :

Defendants. :

CENTENNIAL BANK, INC., :

Counterclaimant and :
 Cross-Claimant, :

vs. :

GRAY EXCAVATION, INC., a Utah :
 corporation, JARED R. GRAY and :
 HEIDI H. GRAY, BERNARD W. DUTSON, :
 AZORA DUTSON, LYMAN DUTSON, :
 MICHAEL WEIS, LUCIA WEIS, LANE :
 MYERS, LANE MYERS CONSTRUCTION, :
 L.C., GARY McDONALD, G&L MAC, INC., :
 RYAN ANDERSEN, CASEY FLORENCE, :
 BRADFORD E. TAYLOR, MOUNTAIN VIEW :
 TITLE AND ESCROW, and JOHN DOES :
 1-10, as well as another person or :
 entity claiming any right, title :
 or interest in the real property :
 which is the subject of this :
 action, :

Counterclaim and :
 Cross-Claim Defendants. :

The Court requested that counsel for both Centennial and Taylor simultaneously, within five days of its Memorandum Decision dated October 6th 2009, submit supplemental Memoranda limited to addressing the

applicability of the analysis in Premier Bank v. Board of County Commissioners of the County of Bent, 2009 Colo. App. LEXIS 1040 (June 11, 2009), that the after-acquired title statute does not affect lien priority i.e. prevail over the race notice statute.

The Court has reviewed what was filed by both parties and now issues its final Memorandum Decision on Plaintiffs' Motion for Partial Summary Judgment as to the Validity and Enforceability of the Lien of Plaintiffs' Deed of Trust and Defendant Brad Taylor's Motion for Partial Summary Judgment. Being now fully informed, the Court rules as stated herein.

The undisputed facts indicate that on June 1, 2006, Defendants Gary McDonald and Ryan Andersen executed a Deed of Trust in favor of Defendant Taylor. This Deed of Trust was recorded on June 5, 2006. In reality, the Property was not owned by Defendants McDonald and Anderson, but owned by Defendant G&L Mac, Inc. ("G&L").

On June 2, 2006, Defendant McDonald, again in his individual capacity and without owning the property, executed a Deed of Trust in favor of Plaintiff Centennial Bank, Inc. This Deed of Trust was recorded on June 2, 2006. Both Deeds of Trust were invalid because Defendant McDonald did not own the property that were involved in the two Deeds of Trust.

Defendant Taylor was the first to discover that Defendant McDonald, without owning the property, had given two Deeds of Trust, one to Plaintiff which was recorded on June 2, 2006, and one to him which was

recorded on June 5, 2006.

On September 5, 2006 to fix his invalid Deed of Trust, Defendant Taylor obtained a Deed of Trust from the property owner Defendant G&L in his favor. This Deed of Trust was recorded on September 6, 2006.

When Plaintiff Centennial learned of the two invalid June Deeds of Trust and the September 5, 2006 Deed of Trust recorded by Defendant Taylor, it chose to try to correct their invalid June 2, 2006 Deed of Trust by obtaining and recording of a Special Warranty Deed from G&L to Defendant McDonald on December 22, 2006 and rely upon the after acquired title act to give it priority over Defendant Taylor September 5 2006 Deed of Trust. Plaintiff would not have had priority over Defendant Taylor's September 2006 Deed of Trust if it had merely obtained a new Deed of Trust from the property owner and recorded it in December 2006 when it learned of the problem.

The case authority cited by Plaintiff and close examination of the distinctions between Utah law and Colorado law have convinced the Court that the analysis found in Premier Bank v. Board of County Commissioners of the County of Bent, 2009 Colo. App. LEXIS 1040 (June 11, 2009) would not applicable. Unlike Colorado, Utah is a "title conveyance" state in that a Deed of Trust actually transfers title to the property to the Trustee so the property can be sold by the Trustee upon default.

Plaintiff Centennial's June 2, 2006 Deed of Trust was invalid when recorded, but the Utah's After-Acquired Title statute creates a valid

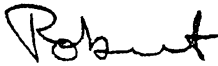
conveyance with a priority date of June 2, 2006, the recording date of the initial Deed of Trust executed by Defendant McDonald in favor of Centennial. The Utah After Acquired Title statute in effect in 2006 clearly indicates its provisions apply to Deeds of Trust as well as Warrant and Special Warranty Deeds.

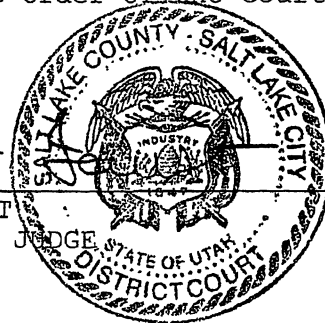
Further, Defendant Taylor had notice Plaintiff's Deed of Trust when he recorded his Deed of Trust on June 5, 2006 because it had been recorded three days earlier on June 2, 2006.

Therefore, the Court grants Plaintiff's Motion for Partial Summary Judgment and denies Defendant Brad Taylor's Motion for Partial Summary Judgment

This Memorandum Decision will stand as the Order of the Court.

Dated this 3rd day of December, 2009.


ROBERT P. FAUST
DISTRICT COURT JUDGE



MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Memorandum Decision, to the following, this 3rd day of December, 2009:

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